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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/069,661 | 06/24/2002 | Gerhard Thurow | 10537/199 | 3538 |

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| EXAMINER |
|---|
| GRAHAM, MATTHEW C |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3683 | |

DATE MAILED: 03/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

# Office Action Summary

| Application No. | Applicant(s) |
|---|---|
| 10/069661 | ACKER ET AL. |
| **Examiner** | **Art Unit** |
| GRAHAM | 3683 |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☐ Responsive to communication(s) filed on _____.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 17-31 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 17-31 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

1. Receipt is acknowledged of the preliminary amendment filed on 2-25-2002.

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

> The oath or declaration is defective because:
> Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

3. The abstract of the disclosure is objected to because it contains more than one paragraph. Correction is required. See MPEP § 608.01(b).

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merkle '481 in view of Merkle '154.

Note outer bell (116, 216, 316), rolling pistons (105, 205, 305, 106, 206, 306) hydraulic accumulator 221, bellows (103, 203, 303).

The claimed invention differs from Merkle '481 only in the diameter at the lower mounting portion.

Merkle '154 shows a spring of the type claimed wherein the lower mounting portion of the bellows is larger than the upper mounting portion -- see Figure 1.

It would have been obvious to one of ordinary skill in the art to have utilized a larger diameter lower mounting portion in Merkle '481 in view of the teaching of Merkle '154 depending on the size of the shock absorber connecting to the spring.

Re-claims 18-21, Merkle '481 shows the recited features.

Re-claim 22, the use of water-alcohol as the fluid would have been obvious to one of ordinary skill in the art as a mere substitution of fluids to change the damping rate.

Re-claim 23, note column 9, lines 51-58, of Merkle, '481.

7. Claims 24-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merkle '481, in view of Merkle '154 and GB 2,318,851.

Note the previous discussion in paragraph 6.

The claimed invention differs from Merkle '481, as modified, only in the inclusion of an accumulator connected to the bellows.

UK '851 shows accumulator 12 connected to bellows 2, 3.

It would have been obvious to one of ordinary skill in the art to have attached an accumulator to Merkle '481, as modified in view of the teaching of UK '851 as an accessory feature as taught by UK '851.

Re-claims 25-31, the recited features are readily apparent in the applied references.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pryor, Kawamata et al. and Watanabe et al. show bellows-type springs in combination with shock absorbers.

9. Any inquiry concerning this communication should be directed to Mr. Graham at telephone number (703) 308-1113.

Graham/kl
February 24, 2003

2/26/2003
MATTHEW C. GRAHAM
PRIMARY EXAMINER
GROUP 310